

MINUTES

MONTANA SENATE 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN JERRY O'NEIL**, on March 7, 2003 at
3:00 P.M., in Room 350 Capitol.

ROLL CALL

Members Present:

Sen. Jerry O'Neil, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Brent R. Cromley (D)
Sen. John Esp (R)
Sen. Trudi Schmidt (D)

Members Excused: Sen. Bob DePratu (R)
Sen. Dan Harrington (D)
Sen. Emily Stonington (D)

Members Absent: None.

Staff Present: Dave Bohyer, Legislative Branch
Andrea Gustafson, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HJ 3, 2/25/2003; HJ 14, 2/25/2003;
Executive Action: HJ 9; HB 56; HJ 3; HJ 14

HEARING ON HJ 3

Sponsor: REP. BOB LAWSON, HD 80, Whitefish

Proponents: Kathy Ostrander, Department of Public Health & Human Services
REP. NORMA BIXBY, HD 5, Lame Deer
Robert McClean, Self

Opponents: None.

Opening Statement by Sponsor:

REP. BOB LAWSON, HD 80, Whitefish, said that Page 2, Lines 10-15, gave the meat of the resolution and what it was about. HJ 3 was requested by an interim committee to study child abuse and neglect proceedings in order to determine how to provide representation for indigent families. More specifically, how the bill would provide representation in child protective services proceedings, in order to provide guidance through a difficult process of balancing the best interests of the child, the rights of the parents, and the possibility of reunification of family. In addition, it would provide prevention and early intervention strategies as early as possible. This was a bill that came out of the Children's, Family, Health and Human Services committee. The committee recognized there were issues worthy of being studied of whether advocacy or other forms of counsel should be appointed early on such as in child protective services proceedings.

Proponents' Testimony:

Kathy Ostrander, (DPHHS), Child and Family Services Division, gave a little background on the representation of parents in a court proceeding. She said there were six types of petitions that could be filed in a child abuse/neglect proceeding. At the beginning there was an emergency protective service order that lasted when there was termination of parental rights. The current statute required legal representation to be appointed in three circumstances. One, when the petition terminated parental rights and if the parent was indigent, he/she had a right to get counsel appointed. When a petition was filed to request the determination that preservation in reunification services would not be required, it lead to a termination of parental rights. When a subject of the proceeding was an Indian child, as defined by the Indian Welfare Act, and the parent was indigent, counsel was appointed. At all other times it was at the discretion of the district court judge to appoint counsel. The practice of appointing counsel varied in jurisdictions. For example, seven jurisdictions appointed counsel at an initial petition, at the

point of applying for emergency protective services. Seven of the jurisdictions appointed counsel when the petition called for termination of parental rights. Two jurisdictions appointed counsel for temporary legal custody; two others did it on a case by case basis. And four of them varied by the counties within the judicial district. The division supported the resolution because from the studies necessary, it was their contention that their cases seem to move more efficiently through the system when the parents had counsel representing them. **Ms. Ostrander** said it was also an equity issue. The state had representation, the child had an appointed *guardian ad litem* or a special court advocate, and parents should have that counsel.

REP. NORMA BIXBY, HD 5, Lame Deer, said it was important to study the situation and another area she advocated for. She hoped that one day the system would work on the behalf of children and families. She said that anything that could be done to help keep families and children together and to protect families and children should be done. She supported the resolution and urged for support as well.

Robert McClean, Self, urged for support of the resolution. He said he came from practical experience of being on the short end of the stick. He said some there would remember him from being there at the last session where he appeared before the committee with a large poster of two missing children that were lost by the State of Montana. He said it took nearly four years to recover the children in Three Forks, MT. He said that unfortunately this was where the issue of representation came into play. Under ICWA, when there was a proceeding involving a Native American child, the courts had to appoint legal counsel. Upon motion, the Thirteenth Judicial District Court in Billings, MT, made to the appointed counsel for his son, who was the father in the case. The motion was never acted on, and his son never got appointed counsel. He had to go get his own counsel. **Mr. McClean** said it was fortunate his son got hold of **Mike Egan** of Montana Legal Services because he qualified for their services. That was a heavy route to go. **Mr. McClean** asked the committee to imagine their own son or daughter at age 22, being faced with a battle with the full power of the State of Montana being thrown up on him or her, without legal counsel, wondering what to do. He said there needed to be legal counsel appointed and there needed to be follow through with that. DPHHS in that particular case knew that the children were Native American and still did not move. The study of the whole issue of representation also would get into the question of how the *guardian ad litem*s were appointed. In their case there was a guardian ad litem who had been appointed. The guardian ad litem had been the deputy county attorney who had been involved in the case on the other side of

the table. At that time, she had just become the county prosecutor. She never spoke to the family or to him. She never spoke to the father. After the department was ordered to have the kids returned to the father immediately by the district court in Billings, the department did not go get the kids and the mother took off with the kids. He said the guardian ad litem did not call the Billings police department, even though that was her duty. The CFS never called the police either for almost four years and that was an atrocity. He said that if he had won the lottery, he wondered if his family would have been treated the same. He said he did not think so. **Mr. McClean** said the bottom line was that two children suffered. He said they were lucky in getting their counsel on board within a reasonable period of time. Others were not so lucky and thought it was wrong to drop the power of the State of Montana on the head of people who were in no position to defend themselves. There were elected officials with their wisdom, who were expected to protect the people. Unfortunately when the county attorney was representing CFS, they are in a quandary. He wanted to know what the county attorney would do if CFS did something illegal. He thought that posed a conflict of interest in the representing of all parties. This resulted in an unfair justice system.

Opponents' Testimony: None.

Informational Testimony:

SEN. DUANE GRIMES, SD 20, Clancy, said he knew Ms. Murphy was unable to testify and wanted to know if she wanted to address the resolution. **Ms. Murphy** said she did and gave her name as **Connie Murphy**, the executive director of the MT Chapter of National Association of Social Workers. She said her association supported the bill and could give two examples of where representation was needed. She worked with seriously emotionally disturbed children and their families and was a key witness in two custody hearings. One was where the parent had extremely good representation and still lost custody of the child which was appropriate. The other case, the person had terrible representation, and in her estimation should have lost custody, but the representation was embarrassing to her. She thought **REP. LAWSON** was on the right track with HJ 3.

Questions from Committee Members and Responses:

SEN. JOHN ESP, SD 13, Big Timber, said it appeared that attorneys were focused on more than an ombudsman process and wondered if that were true. **REP. LAWSON** said he did not think so. He referred to Page 2, Lines 3-6 which addressed that. He said that as the Child and Family Health and Human Services committee moved

along, he had thought at one time entirely about the ombudsman. In the House committee hearing, there were two ombudsman that came and testified as proponents. He encouraged it.

SEN. ESP asked how many adversarial cases CFS had a year. **Ms. Ostrander** said she could not venture a guess on how many petitions were filed on any given year. It was a large number, possibly in the 500's statewide.

SEN. ESP asked if it were about 50 a month. **Ms. Ostrander** said in each jurisdiction that was probably high.

SEN. ESP asked if she could get the numbers to him later. He wondered what the cost would be incurred if it were pursued. **Ms. Ostrander** said she would get those numbers to him.

SEN. TRUDI SCHMIDT, SD 21, Great Falls, wondered what **Ms. Ostrander's** job title was now. She thought **Ms. Ostrander** was once the head of the division for awhile. **Ms. Ostrander** said she was currently the acting program bureau chief. She was formerly a regional manager.

SEN. JOHN BOHLINGER, SD 7, Billings, asked **Mr. McLean** to share what motions or actions he took to get his grandchildren back. **Mr. McLean** said the case began in the Northern Cheyenne Tribal Court where the children were enrolled, which was where the custody order was issued. That certified order was immediately taken to the Yellowstone County Attorney on September 26, 1997 and properly served to the Yellowstone County Attorney. Another one was served upon Hank Hudson, who was then head of the Child and Family Services Division, while he was in Billings. Another copy was brought to Helena and served on **Laurie Eckinger**, the director of the Department of Public Health and Human Services. Next, a guardian proceeding took place which was orchestrated by CFS in Billings. That problem led to a delay. They lost that case as well. **Mr. McLean** said he intervened under the Indian Child Welfare Act. As a member of the extended family, he had the right to motion the court to intervene at any proceeding, which was what he did and represented himself. His son was represented by **Mike Egan**. He said they prevailed, but it took another nine months. After that case, the order from that was served on the department and the Yellowstone County attorney. They still would not honor the tribal court custody order. Under ICWA, a tribal court order under US Code 17-38-A, was to be granted full faith and credit by the State of Montana. The State of Montana would not grant full faith and credit to that order. The department was in violation of that law. **Mr. McLean** said the next thing they went through was the Child in Need of Care proceeding. He and his son prevailed on that as well. The judge ordered, called the

hearing to a halt at one point, because she was disgusted with the department. She ordered the department to immediately return the children to the natural father. The department did not do that. For three and one half hours, the department delayed while talking to someone in Helena. In the meantime, the mother took off with the kids. He said it was a long journey after that. He and his son proceeded to serve the same orders on the U.S. Attorney for the district of Montana. Ultimately, the case was appealed to the Montana Supreme Court. The Montana Supreme Court ruled that DPHHS had violated the Indian Child Welfare Act. This overturned the judge's part where it dealt with the children being returned. It said that once the judge had dismissed the case, she was without power to order the department to return the children. He took the decision of the Montana Supreme Court back to the Northern Cheyenne tribal court, which had stayed its hand while all the other court proceedings were going on. There was one court proceeding that took place where he and his son were never notified of the proceeding or served with the petition for a restraining order, that sought to restrain the father from his children, as well as his entire extended family from the Northern Cheyenne reservation. They did not know it existed until almost a year after the abduction. That was a meeting where one of the people from the county attorney's office went with one of the people over to see the judge. **Mr. McLean** did not believe the Montana Supreme Court knew the children were missing. The children were listed on the NCI and posters were posted nation wide from the Nation Center for Missing and Exploited Children. He said the department was still doing nothing to help in the recovery. For the first two and a half years of that, DPHHS financed that abduction in welfare payments to the people who had the children. He got the tribal court hearing scheduled and the litigants did not show up, so it was rescheduled. This happened a second time and they appeared by phone with legal counsel. The ruling went against the abductors. That court order was taken to the 16th Judicial District Court and a motion for recognition of a judgement was filed. They subsequently prevailed in that action, recognizing the tribal court custody order. At that point, law enforcement cited that this was a problem in Billings. It was the first order of its kind ever issued in the state of Montana. **Mr. McLean** said there was never any intention of assisting in locating those children by either state or federal law enforcement authorities. That took them from 1997 into the early part of 2001, a four year period. He said he represented his son in the state district court.

SEN. BOHLINGER asked if it were **Mr. McLean's** belief that if the resolution were to pass, would it prevent all the obstacles he had to go through. **Mr. McLean** said it would definitely do that. He said that one of the decisions the Montana Supreme Court came

out with, which the department was still not complying with, ruled that CFS, before it sought a TIA or a protective order from a state district court, must demonstrate to the judge all the reasonable efforts they have done. They have to detail what they have done to prevent the breakup of the family. They were still not doing that, even though that was a precedent. That clause was in the Attorney General's litigation manual that went to the county attorneys and to the department. He did not understand why the department was still not doing it.

SEN. ESP asked if **Ms. Ostrander** was an attorney. **Ms. Ostrander** said she was not.

SEN. ESP asked why the department not doing what Mr. McLean said was precedent under Montana law. **Ms. Ostrander** said that when the department filed an affidavit, the social worker was required to list the reasonable efforts that were made to keep the family intact. She said there were times in an emergency situations where there may be imminent risk of harm or the children may have been abandoned and there was no ability to keep the family together.

SEN. ESP asked if there was any attempt, post emergency, to detail a reason. **Ms. Ostrander** said they were required to show reasonable efforts many times in a court proceeding. First was when the child was removed, they had to show reasonable efforts made to keep the family intact. The next point was to show reasonable efforts that they attempted to return the child safely to their home and then had to show reasonable efforts to find a permanent home for the child.

SEN. ESP said he got many calls like **REP. LAWSON** over the interim about situations that were similar to what was being talked about today. He realized there were two sides to every story and he hoped that there was something they could come up with where someone independent of the department could investigate this type of thing, much like the mental health ombudsman did, for mental health issues. This would be so they could have the authority to gather accurate information from both parties.

Closing by Sponsor:

REP. LAWSON thanked everyone there for a good hearing. His goal was to have the appropriate committee to look at the situation and find the available avenues. He wanted them to be able to find models available and find which ones to copy, whether they be with the children or mental health and other states and see if they could be applied in this situation. He said **SEN. SCHMIDT** was chairman of the Children, Family, Health & Human Service

committee for the last interim and had agreed to carry the bill, should it be concurred in.

HEARING ON HJ 14

Sponsor: REP. NORMA BIXBY, HD 5, Lame Deer

Proponents: Colleen Murphy, MT National Association of Social Workers
Robert McLean, representing Ateah and Mariah McLean

Opponents: None.

Opening Statement by Sponsor:

REP. NORMA BIXBY, HD 5, Lame Deer, said she had two Indian reservations in her district, the Northern Cheyenne and the Crow Indian reservation. She said House Joint Resolution 14 came about because of a study completed during the interim. She passed out a copy of the study. **EXHIBIT (phs48a01)** She said it was HJR 32. It was an audit on the Child Protective Service Division in DPHHS. She said she reviewed the study and realized that there might be a possibility that the public would be better served if the social workers of Montana were licensed and better trained to do social work. REP. BIXBY said HJ 14 would study the need of better trained social workers. The study would also determine if a trained social worker was needed and how best could the licensure be accomplished in the best interests of the present employees. Currently, not all employees in Child and Family Services Division had a social workers background, but were expected to do the work of a trained social worker. All the employees do have a degree, which did help. According the National Association of Social Workers, 75% of children receiving child and welfare services are served by the person who had no training or little training in their work. The present training required by the department, only new employees completed a Montana child abuse and neglect training curriculum. CFS, according to HJ 32, did not have a systematic approach to identify or provide consistent or uniform training for social workers or supervisors after the initial training. The training within the department was very limited. She said of the 17 recommendations made in the study, more training was the key for not only social workers, but for the Department of Justice and the Supreme Court. The HJ 32 study also identified that there were no specific division policies on continuing professional education for social workers or the supervisors. Based on this information, a trained, licensed social worker would be offered

short term training, and thereby do a better job for the client and the family. The social worker would be better trained in presenting the client's case to the judges. The other recommendations included: improving case file management, the need for better documentation on actions taken by social workers, improving development of treatment plans, needed foster care placement action that was supportive and clearly documented, correct inconsistencies in statutory non-compliance, and a need for a standardized treatment plan and others. She said those were all areas that a trained social worker must learn. She did not believe that could be acquired through short term training course or program. The training would improve the department's track record in serving their clients. She acknowledged the social workers tremendous case load, with over 9,692 cases of child abuse reported. There was 9,647 of them in the CHIP program in 2001; 8,952 enrolled in the FAIM program. On the average 2,143 children were in out-of-home placement. She said the numbers needed to come down. She said she knew social workers were not paid well and that there was a high turnover. This was all overshadowed by the need for more funding. The study would take a full picture of what was in HJ 32 with the clients and the social workers, and determine if training and licensure would improve their performance and how the department would address the needs of the clients. The study would also assure collaborative efforts took place between the state, the National Association of Social Workers, and other relevant groups to see what would be best for Montana. **REP. BIXBY** said one positive thing about licensure was that they would be monitored by an outside entity. Currently there was an internal process for addressing grievances.

Proponents' Testimony:

Colleen Murphy, Executive Director of the MT Chapter of NASW, said she represented approximately 400 social worker professionals across the state. She had a Master's Degree in social work and was a licensed clinical social worker. Her association consisted of persons with a social work degree from an accredited school of social work, either at the baccalaureate, the master's or doctorate level. She said they may come next session with a licensure bill specifically for social workers. She passed out a handout that explained what it was they were trying to do. **EXHIBIT (phs48a02)** She said that currently in Montana, social workers were licensed only at the clinical level, those who did non-health practice and accept third party reimbursement. Social workers work in a variety of practice settings, not just Child and Family Services. They work in hospitals, in aging, schools, and mental health. They have a huge variety of social work tasks. In their perspective, they

think they should be licensed. Currently 37 states licensed social workers at all three levels. Montana's neighboring states: N. Dakota, S. Dakota, Wyoming, and Idaho all had the three levels of licensure. The professionalism of that was huge for them. If a person graduated from a school of social work in Montana and then went to work in another state, that person would be expected to become licensed. Expectations here were somewhat lower than 37 other states and all Montana's surrounding states. She said the association would like to see licensure at all three levels. They are concerned that through licensure, people would have the same requirements and have continuing education, thus clarifying professional social work practice. Currently in Montana anyone could call themselves a social worker and not have the appropriate degree. Credentialing through licensure helped define for the public what a social worker was and most importantly it gave an independent third party broad direction about which complaints could be filed. It was not just a protection for the public issue, but also a protection for the professional to have an investigation for erroneous complaints and have their name cleared. There was a standardized licensure that was used across the country by the Association of Social Work Boards. It was called the Model Practice Act. The information was found in the handout she gave earlier. She said it was the wave of the future in the profession of social work in the country.

Robert McLean, representing Ateah and Mariah McLean, said he did support the licensure issue. He said having been a school administrator with a doctorate in school administration and a minor in counseling and psychotherapy, a master's in vocational rehab and a master's in special education, and a bachelor's degree in social sciences, he believed strongly that if there were people working in the field, they should be qualified under law. Teachers were required to be certified to work in the classroom with twenty kids, but we did not require social workers to be certified. The work of a social worker in many ways was much more difficult and stressful than the classroom teacher. Licensure was one way of raising the standard in the state and improving the quality of services. Ultimately it would cut costs. He thought it may help decrease the number of social workers in the state at the department level. A competent social worker, trained in their field who knew what they were doing could probably do the work of three people who were not trained. That would save the taxpayers money, whether federal or state.

Opponents' Testimony: None.

Informational Testimony:

Kathy Ostrander, DPHHS, Acting Program Bureau Chief for Child and Family Services. The division had 186 social workers and 33 social worker supervisors. All had degrees.

{Tape: 1; Side: B}

They are offered annual training for Forensic Interviewing, ICWA Conference, Child Abuse/Neglect Conference, and training on facilitating family group decision making meetings. Recently the division developed a curriculum on case records for documenting what the supervisors implemented. The current process for complaints investigation in enforcement procedures varied depending on the situation at hand. When child abuse/neglect was substantiated against an individual, they had a right to a fair hearing. Clients may write letters to the governor or members of the legislature, or congress. The complaints were investigated by a bureau chief who has no direct supervisory relationship to the staff or the issue that was of concern. The grievous complaints of misconduct were investigated by a team of individuals selected by the division administrator often assisted by the department's Human Resources staff. Appropriate disciplinary measures were taken in the investigation outcome that warranted that action.

Questions from Committee Members and Responses:

SEN. BOHLINGER said he understood what **REP. BIXBY** was trying to bring about in HJ 14 and was in total agreement that if there were licensed social workers, the needs of the population would be better met. He asked to be shown where in the bill it was clearly stated that they wanted licensed social workers. **REP. BIXBY** said Page 2, Lines 10-11. She said the interim committee wanted to look at licensure to address what came out of HJ 32. She said they met with the department. Her first bill was for licensure and the department decided it was not the appropriate time because many of the employees were not licensed social workers and that there might be problems created there. So they would use the interim study to determine whether to do licensure or not.

SEN. BOHLINGER said he saw where licensure was included. He asked where it was mentioned that it was social workers needed licensure specifically. **REP. Bixby** said it alluded to it. When she talked to Susan Fox, the legislative staffer, they wanted to address the reasons why licensure was needed, which was why the language was as it was in the resolution.

SEN. GRIMES said he understood how she got to the study phase. He asked if there was any consideration to doing a study bill as

opposed to a study resolution. He said the reason he asked was because he noticed that the interim committee would be studying this along with a number of different individuals. He said it created more work, so when they were all ranked, it may not rank well. He thought a better approach might be a bill so that the study was funded. **REP. BIXBY** said they did not discuss having a study bill. It was brought up on the House side by **REP. PATTISON** that might have been the way to go rather than as a resolution, but it was never really discussed.

SEN. GRIMES said his concern was that there were fewer resources through the interim that had already been cut back and many study resolutions were coming through. **REP. BIXBY** said she thought the reason there was not a fiscal note with it was because the National Association of Social Workers would be a part of the study. They were earning money to do the study and part of the process would be funded that way because they were working toward licensure. The association wanted to bring a bill next time for licensure and the study would help them in the process towards presenting the bill in the next legislative session.

SEN. GRIMES said the dilemma he would be in with the resolution was that there were arguments for and against licensure in general and particularly with social workers. He said he would not mind reviewing that but may not be completely comfortable with the "WHEREAS" statements the way they were in the resolution that would send the message that projected the outcome wanted. He asked if she would be open to the "WHEREAS" statements being worked on a little bit. **REP. BIXBY** agreed, saying some confusion existed, particularly with employees already in those positions and who might be affected by the grandfathering aspects of the bill. She also was concerned about the provision of further education. She had no objection to the reworking of the "WHEREAS" statements. She felt strongly that there needed to be licensed social workers in the system.

SEN. GRIMES asked if she had any discussion on what effect licensure would have on the classification for the pay level or range and how it would affect the current social workers in the system. **REP. BIXBY** said no, but thought it would be part of the study and what the impact would be. She thought licensure would upgrade their level and at the same time the state would not need as many social workers either.

SEN. O'NEIL said there was a list of social workers in the state and asked if she was aware of that list. **Ms. Ostrander** said she was aware of the Board of Social Workers and the Licensing and Social Work Examiners.

SEN. O'NEIL asked how many of the social workers on the list were licensed. **Ms. Ostrander** said they were all licensed. Anyone on their list would be licensed.

SEN. O'NEIL said he thought there were about 1000 people on it. **Ms. Ostrander** said that could well be. She said there was a cadre of licensed counselors in the state, some who were clinical social workers, some had degrees in psychology, and other counseling degrees, all which required licensure if they were going to practice and take in third party payments.

SEN. O'NEIL said it was a list of counselors, rather than social workers. **Ms. Ostrander** said it included all of them.

SEN. O'NEIL asked what it took to be licensed to be a social worker on the list. **Ms. Ostrander** said a person would have to have a master's degree, pass the test, and keep up educational requirements every year.

SEN. O'NEIL asked why DPHHS did not use the people on the list rather than employing those who were not licensed. **Ms. Ostrander** said anyone on the list could apply for a state job and said she was licensed herself.

SEN. O'NEIL asked why those people on the list were not utilized. **Ms. Ostrander** said because they did not apply for the job.

SEN. GRIMES asked **Dave Bohyer** if he had any idea how many study resolutions were in the pipeline right now that would affect the Children and Family Services interim committee. **Mr. Bohyer** said no.

SEN. GRIMES asked if he would get the number for him before they did executive action.

Closing by Sponsor:

REP. BIXBY said the Child and Family Service Division really needed to have a well trained cost-effective work force. She did not know why they did not utilize those with a license but thought it was because it was not a requirement that the social workers be licensed. Licensed social workers would bring credibility to the department and would also provide the best service to those who were impacted by the department. She said it was crucial that children had the best representation, someone who was well trained, who could assure that their clients needs were being met, and consistent program follow-up. The chances of keeping families together would be better.

EXECUTIVE ACTION ON HJ 9

Motion: SEN. GRIMES moved that HJ 9 BE CONCURRED IN.

Discussion:

SEN. GRIMES changed the word "price" to the word "cost" on Page 1, Line 7 and Line 16, so that it said the cost of medications was being studied and not the price, which indicated something different.

Motion/Vote: SEN. GRIMES moved that his AMENDMENT BE ADOPTED.
Motion carried 6-0.

SEN. ESP moved for an amendment on Page 1, Lines 10 and 11, striking "so high that" and inserting "dramatically in recent years; and WHEREAS,"

Motion/Vote: SEN. ESP moved his AMENDMENT BE ADOPTED. Motion carried 6-0.

SEN. GRIMES moved to strike remainder of line 17 through "hardship" following the word "affordable." This would also include the Title, striking "TO" on Line 7 through "EVERYONE" on Line 8.

Motion/Vote: SEN. GRIMES moved that his AMENDMENT BE ADOPTED.
Motion carried 6-0.

Motion/Vote: SEN. ESP moved that HJ 9 BE CONCURRED IN AS AMENDED. Motion carried 6-0.

EXECUTIVE ACTION ON HB 56

Motion: SEN. GRIMES moved that HB 56 BE CONCURRED IN.

Discussion:

SEN. GRIMES asked how **SEN. ESP** felt about HB 56 because he had worked in that area for a long time regarding involuntary commitment to Lewistown. **SEN. ESP** said he and **SEN. STONINGTON** visited with some of the people that came to testify after the hearing. He said he was as comfortable as he was going to get with the bill, but would like to find a way people did not have to go to court each time to sign up for another year for long term people there who were incapacitated. He said constitutionally there was little leeway, from what he understood of the conversations afterwards.

{Tape: 2; Side: A}

SEN. O'NEIL asked if they could do that via video-conference.

SEN. ESP said that might be somewhere in statute and thought they were allowed to that, but was not sure.

SEN. DEPRATU asked if that was addressed last legislative session and set that up because of the concern of transporting patients from Billings to a 20 minute hearing and back. If the patient was not stable, the trip could be hard on them. He thought that was changed during the last legislative session so it could be handled by video. **Mr. Dave Bohyer, Legislative Services Division**, said he was not familiar with what was done with respect to the mentally ill. He said he could research that before executive action was done if that was what the committee wanted.

SEN. GRIMES thought that would be valuable information. He said the whole guardian concept was being removed, which went back to the involuntary commitment issue that **SEN. WATERMAN** dealt with last year. Now they were doing it for a specific population. He asked if **SEN. ESP** was comfortable with removing all the language in the powers of the guardianship. **Mr. Boyer** said the language in the Title was stricken because the amendments to MCA Section 72-5-321 were no longer in the bill so there would be no revisions under this bill to Section 72-5-321. The guardians of incapacitated persons remained as it was in HB 56.

SEN. ESP said current law prohibited guardians from involuntarily committing the person they are guardian to. Although the law had not been followed for years, the attempt was to say "except for in this one instance the guardian can not do it" in the bill. He said this was about as good as it was going to get.

SEN. O'NEIL asked if **SEN. ESP** would be comfortable voting on it now without any more information. He said he would be.

SEN. GRIMES said he did not have a problem with it. He just wanted to reconcile with **SEN. WATERMAN's** recommendations because she spent an incredible amount of time on this. He said **SEN. ESP** would have the best understanding of that and asked if that were necessary. **SEN. ESP** said if they looked at Section 1, Subsection 3(d), which was the part that **SEN. WATERMAN** had worked on, among other things that were worked on in more detail. He said earlier this session, a bill was passed that altered the section, putting caveats and sideboards on that process. He was not sure what was done in Subsection 3(c) would affect the other part of it. It was a community commitment, not a commitment to an institution. He understood that the initial commitment would be for three months, and then at that point a six-month extension could be

applied for. At the end of that period and every year there after, a yearly extension could be applied for that involved the opportunity for a hearing.

SEN. GRIMES said that made sense. He wanted to make sure they were committing the right people.

Motion/Vote: **SEN. GRIMES** moved that HB 56 BE CONCURRED IN.
Motion carried 6-0.

EXECUTIVE ACTION ON HJ 3

Motion/Vote: **SEN. ESP** moved that HJ 3 BE CONCURRED IN. Motion carried 6-0.

EXECUTIVE ACTION ON HJ 14

Discussion:

SEN. GRIMES said he could not support it. He understood **REP. BIXBY's** intent, but the resolution was unclear. The testimony asserted that those people were credentialed, or at least educated. He did not want to go on record as sending a legislative intent that we think licensure was the way to go, when we really do not know.

SEN. BOHLINGER said he understood what the intent was, but he thought the language was not clear enough. He did not see the reference to social workers. It was not a clear or strong enough statement as to what the intent was. It was confusing.

SEN. CROMLEY said he had a lot of concern as well. He said the title would have to be changed because it did not state anything about licensure. It said the opposite. It talked about how to address problems when the employees were not licensed and it was poorly worded.

SEN. GRIMES did not think the resolution had been thought through on how it would work. He thought the subject matter lent itself to a study bill, but not a joint resolution.

Motion/Vote: **SEN. O'NEIL** moved that HJ 14 BE INDEFINITELY POSTPONED. Motion carried unanimously.

{Tape: 2; Side: B}

ADJOURNMENT

Adjournment: 4:42 P.M.

SEN. JERRY O'NEIL, Chairman

ANDREA GUSTAFSON, Secretary

JO/AG